Michael Konig t/a Nursing Center at Vineland *and* Communications Workers of America, Local 1040, AFL–CIO. Cases 4–CA–20962–2, 4–CA–20984, 4–CA–21083, 4–CA–21093, and 4–CA–21360

August 31, 1994

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS AND DEVANEY

On August 27, 1993, Administrative Law Judge Michael O. Miller issued the attached decision. The Respondent filed exceptions and a supporting brief to the judge's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Michael Konig t/a Nursing Center at Vineland, Vineland, New Jersey, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

Henry R. Protas, Esq., for the General Counsel.
Stuart Bochner, Esq. (Horowitz and Pollack, P.C.), for the Respondent.

DECISION

STATEMENT OF THE CASE

MICHAEL O. MILLER, Administrative Law Judge. This case was tried in Philadelphia, Pennsylvania, on March 24 and May 5 and 6, 1993, based on unfair labor practice charges filed on August 7 and 14 September 25 and 30, 1992, and January 15, 1993, as amended, by the Communications Workers of America, Local 1040, AFL–CIO (the Union), and complaints and orders consolidating complaints issued by the Regional Director of Region 4 of the National Labor Relations Board (the Board), on October 7 and November 5, 1992, and February 26, 1993. The consolidated complaint alleges that Michael Konig, t/a Nursing Center at Vineland (Respondent or the facility) violated Section 8(a)(1), (3), (4), and (5) of the National Labor Relations Act (the Act). Respondent's timely filed answer denies the commission of any unfair labor practices.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

FINDINGS OF FACT

I. THE EMPLOYER'S BUSINESS AND THE UNION'S LABOR ORGANIZATION STATUS PRELIMINARY CONCLUSIONS OF LAW

Respondent, a sole proprietorship, is engaged in the operation of a long-term nursing care home in Vineland, New Jersey. In the course and conduct of its business operations at that facility during the past year, it received gross revenues in excess of $100,000 and purchased and received goods and products valued in excess of $50,000 directly from points located outside the State of New Jersey. The consolidated complaint alleges, Respondent admits, and I find and conclude that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The complaint alleges, Respondent admits, and I find and conclude that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. UNFAIR LABOR PRACTICES

A. *Background*

The Nursing Center at Vineland is one of a number of nursing homes in New Jersey and other States owned by Michael Konig. The Vineland facility has three long-term care units, A, B, and C, and a residential unit. It employs registered nurses, nurses aides, and approximately 30 to 35 licensed practical nurses (LPNs), as well as housekeeping, laundry, kitchen, and clerical employees to staff its three-shift operation. Prior to the certification of the Union as their representative, the LPNs were not represented by any labor organization.

Respondent's proprietor, Michael Konig, travels among his approximately 15 nursing homes[1] maintaining no fixed office. Diane Croiter is the regional manager. The facility or executive director is Sheree Urgo; Abbie Aponte is the director of nursing; Samantha Newman is the administrator; Cathy Lacey is the admissions director; and Phyllis Culley, John Ventura, and Deidre Fronzek are or were supervisors. The alleged discriminatees, Darlene Lindsey, Diane Caine, Nancy Schafer, and Carmen Ocasio, are LPNs.

B. *Union Activity*

Union activity among Respondent's LPNs began in about June 1992[2] with leafletting outside the facility and the posting of union literature on bulletin boards within it. The leafletting was observed by management; Cathy Lacey told Darlene Lindsey and Wanda Walker to go straight to their

[1] Konig was reluctant to acknowledge either the number or location of his nursing homes.

[2] All dates hereinafter are 1992 unless otherwise specified.

cars when they left the facility and not talk to the two men who were outside trying to organize for the Union.

When they exited work, Lindsey, Carmen Ocasio, and Isaida Villaneuva spoke with the union representatives. Ocasio told the others that she saw someone watching them through a window and they arranged to meet further down the street. They continued their discussions, expressing interest in organizing, taking authorization cards to distribute among the LPNs, and providing information to the Union. Subsequently, Sheree Urgo, the director, told Lindsey that she had been seen running down the street, chasing after the union representatives.

Lindsey, Ocasio, Caine, and Schafer assumed roles as spokespersons for the Union on their respective shifts, passed out authorization cards, answered employee questions and announced and attended union meetings. They secured signed authorizations from 17 of the LPNs; of those, about 10 were solicited by Lindsey.

The Union filed its petition (Case 4–RC–17874) for a representation election on June 8. A hearing was held on July 8. Schafer, Lindsey, Caine, and Ocasio were the only employee witnesses; they testified on behalf of the Union. At issue was whether the LPNs were already represented by another labor organization (Local 35, IBT) which purportedly represented a broader unit throughout Konig's New Jersey operations under an existing agreement which would have been a bar to the union's petition, the appropriateness of a unit limited to LPNs and whether Lindsey, Ocasio, and a third LPN were charge nurses with supervisory authority. The employees described their duties and responsibilities; they testified that they had never been made aware of their inclusion in Local 35, IBT's bargaining unit and that they had never received any benefits under its agreement.

The local press covered the hearing and Lindsey's picture appeared in the newspaper. About a week later, Urgo told Lindsey that having her picture in the paper did not help the facility at all. Urgo complained that patient's families were concerned about who was taking care of the patients while the nurses were trying to organize a union.

The Decision and Direction of Election issued on September 17. The Regional Director found that the Local 35 contract was no bar to the election, that a unit of LPNs was appropriate and that Lindsey, Ocasio, and the third LPN were not supervisors. An election was conducted and, on October 27, the Union was certified as exclusive collective-bargaining representative of the following appropriate unit of employees:

> All full time and regular part-time Licensed Nurses (LPNs) employed by the Employer at its 1640 South Lincoln Avenue, Vineland, New Jersey facility, excluding all other employees, registered nurses, quality assurance employees, nurses aides, clerical employees, housekeeping employees, dietary employees, laundry employees, guards and supervisors as defined in the Act.

C. *The Employer's Response to the Union Activity*

1. The 8(a)(1) violations and other conduct evidencing animus

Shortly after the petition was filed, Urgo and John Ventura (supervisor in charge of quality assurance) came to the B unit where Lindsey was working. Prior to this time, it had been the practice of the LPNs to sit in the area behind the nurses' station during their breaks. According to Lindsey, Urgo was ''in a rampage.'' Urgo told Lindsey that she did not want anyone sitting behind the nurses' station. She threw the chairs around and threatened to discipline anyone sitting there. Lindsey asked what was wrong and Urgo replied, ''You know what is wrong . . . You nurses want to play games . . . I'm going to show you how to play games . . . because I'm going to turn into a little bitch like [the facility director at another of Konig's nursing homes].''

Lindsey told Urgo that she didn't mean what she was saying and Urgo insisted that she did. She told Lindsey, ''You nurses want to play games, you want a union, you know what is the matter.'' Lindsey compared Urgo's behavior to that of a ''scorned woman.'' Urgo replied that she would show them and told Lindsey that Konig had asked her, ''How does it feel to have the nurses have their foot up your ass?'' Urgo claimed that she was the only friend the nurses had, the only one taking their side, and that this [i.e., the union activity] was what she got in return. Lindsey insisted that the union activity had nothing to do with Urgo and was not Urgo's fault. She pointed out, however, that when Konig had taken away a bonus, Urgo had done nothing to get it back.[3]

Urgo instructed Ventura to call the C unit. He reported that the chairs had already been removed from behind the nurses' station. Urgo replied, ''Well, good. I'm glad somebody is on the ball and realizes I'm not playing.''

Prior to this time, the LPN's in the B unit had been working 8-hour shifts and were supposed to be going on to 16-hour shifts, as the LPNs in the C unit were doing. Lindsey asked Urgo when the change would occur. Urgo told her not to worry about a schedule she was not going to give them ''because of the Union.'' When Lindsey argued that their union activity was no reason to deny them the longer shifts, Urgo said that she was also doing it because Aponte did not want either the B unit LPNs or those in the C unit to work 16-hour shifts.

Lindsey's credibly offered and uncontradicted testimony[4] clearly establishes both Respondent's animus toward the em-

[3] According to Lindsey's uncontradicted testimony, Konig had taken a bonus away from Lindsey when, after he had been ordered by a governmental agency to pay her $2600 in unpaid overtime, she had refused to accede to his demand that she sign the check back over to him.

[4] Respondent offered no evidence with respect to most of the 8(a)(1) allegations and did not put on an affirmative case. Konig and Urgo were adversely examined by the General Counsel and were questioned by Respondent's counsel, with their testimony essentially limited to the 8(a)(3) and (4) issues. Other than to assert, in general terms, that the statements of the Employer's representatives did not

ployees' union activities and Urgo's willingness to take unlawful reprisals against those employees because of their protected activities. Her imposition of more onerous working conditions (the threat to discipline LPN's who use the area behind the nurses' stations for their breaks, her removal of the chairs from those areas, her threat to be ''a little bitch''), and her revocation of previously planned and apparently desired extended shift hours all violate Section 8(a)(1) as alleged in the complaint. *Auto Sunroof*, 298 NLRB 717 (1990); *Northern Wire*, 291 NLRB 727 (1988).

On another occasion in June, Lindsey and Wanda Walker were called into Urgo's office. Urgo told them that the employees weren't smiling and that nursing homes get cited when the employees appear to be neglecting patient care because everybody is concentrating on union activity. It was at this time that Urgo commented about Lindsey, Ocasio, and Villaneuva having been observed ''running down the street'' after the union representatives. Urgo then asked Lindsey whether she had signed a union card. Lindsey, in turn, asked whether Urgo was asking her or telling her. When Urgo repeated her query, Lindsey said that it was none of Urgo's business.

Lindsey was right, it was none of the Employer's business whether she had signed a union authorization card. Urgo's interrogation of Lindsey, who was not an overt and open union supporter at that time, in her office and in an animus-laden atmosphere, violated Section 8(a)(1). *Raytheon*, 279 NLRB 245, 246 (1986); *Sunnyvale Medical Clinic*, 277 NLRB 1217, 1218 (1985); *Rossmore House*, 269 NLRB 1176 (1984), affd. 760 F.2d 1006 (9th Cir. 1985).

Nancy Schafer testified that, in mid-July, Fronzek asked her, in passing, ''What's up with the Union?'' Schafer brushed off her query by asking Fronzek how she felt about the Union. Fronzek replied that she was neutral on the subject. Under all the circumstances, including the essentially innocuous phrasing of the query, Fronzek's answer to Lindsey's question indicating no personal animosity toward the Union, the fact that Fronzek is deceased, the disparity in dates between the complaint's allegation and Schafer's testimony and my finding of unlawful interrogation by Urgo, no finding of a violation is warranted or required based on this brief conversation.

At some point after Urgo's ''rampage'' at the nurses' station, she called Lindsey to say that Konig wanted to meet with her and several others. After talking it over with Ocasio, Lindsey agreed that the LPNs would meet with Konig but only if all of them could attend. Urgo checked with Konig and a meeting was set for July 6.

While this meeting was held only 2 days before the R case hearing, Konig testified that he doubted that it was in response to the petition. A group of employees had concerns and questions, he said, and sought a chance to question him on ''these matters.'' Among the concerns was whether they were already represented by another union, Local 35 of the Teamsters, as management was claiming. He recalled no specifics of the meeting and what little testimony he gave was not credible.

Between 10 and 15 LPN's met with Konig, Urgo, and Aponte in Urgo's office on July 6. Konig did most of the talking. He asked what problems and concerns the employees had and suggested that they could be worked out without the intervention of a new union. The employees questioned why they were not being paid for overtime and why they could not leave the facility on their meal breaks. Konig said he would get back to them on these.

Someone asked how they could be represented by Local 35 without being aware of it. Konig told them that they were represented by that union and that it was the union's responsibility to inform them, not his. However, he offered to contact Local 25 on their behalf. In the course of this discussion, Konig told the LPNs that if they wanted to belong to a union, there were several others which they could join. However, he would do everything in his power to keep the CWA out of his facility, he said. He referred to the CWA as an intruder coming in to stop them from being a happy family. Angrily, he told them that the discussion was getting off the track and offered to meet with two of them as the LPNs' representatives on a regular basis to discuss the problems at the nursing home. A list of the problems voiced at the meeting was compiled by Urgo.

Lindsey recalled questioning Konig about why he cared which union represented them. He told her not to put words in his mouth and said that ''this is costing me a lot of money.'' She replied, ''So what, we want a union.'' He responded, ''Why don't you leave, Ms. Lindsey, this is not your nursing home.''[5]

On July 7, Urgo invited Lindsey, Ocasio, and Walker to go to dinner with her. They accepted her novel invitation and she took them to a hotel restaurant; Urgo picked up the check. In the course of this dinner meeting, Urgo told them that she had been hurt and angry when she found out that they wanted a union because the LPNs had not given her a chance to resolve any problems they had. She reminded them of what Konig had said to her about her being too close to the nurses and his questioning of how she felt now that they ''had their foot up her ass . . . and were trying to get a union in.'' She told them, ''All I'm asking is to give me the opportunity to show you that we can work things out . . . we could have committee meetings, we can write down a contract ourselves, the four of us . . . you can make up what you want, we'll go over it. We'll have meetings.'' She asked them to talk to the other nurses on their sections and urge them to give her a chance to try and fix things in the facility before the employees went ''to another union.'' She requested an answer by the end of the week. Lindsey then told Urgo that she and Ocasio, both of whom were scheduled to work on the day shift of July 8, would be attending the hearing.[6]

Lindsey and Villanueva spoke with Urgo during a break in the hearing on July 8, telling her that she should not take their union activity personally. ''How could I fail to do so?'' she asked, and said that the dinner of the previous evening had been a waste of time. The nurses never got back to her on the request that they form a committee of their own.

violate the Act but merely indicated its position with respect to the representation matter or sought evidence to support its position in that hearing, Respondent's brief omitted reference to the 8(a)(1) and (5) allegations.

[5] This uncontradicted statement, an unlawful implied threat to her job tenure, was not alleged as an independent violation. *Fontaine Body Co.*, 302 NLRB 863, 866 (1991).

[6] Lindsey's credible description of this meeting was consistent with the testimony of Ocasio and Walker but more detailed.

Konig returned to the Vineland facility on July 13 for his second meeting with the LPNs. At that time, he responded to the complaints he had earlier solicited, stating that he would appoint someone to authorize their overtime and would permit them to leave the home on their meal breaks so long as they punched in and out.

Diane Caine had worked on the 11 p.m. to 7 a.m. shift before the hearing and then spent the daytime hours of July 8 at the hearing. After leaving the hearing and dining with the Union's representatives and the other witnesses, she called in sick; she was exhausted after a full day without sleep. In the course of his July 13 meeting, Konig was vocally critical of her, accusing her of being ungrateful for all the favors he had done her and of not having any consideration for the home. He stated that he should have gotten rid of her when he had the chance and angrily claimed that ''this union business was costing him thousands of dollars.''

The complaints allege, and the foregoing evidence establishes that, in an effort to dissuade the employees from supporting the Union, Konig and Urgo solicited their grievances, impliedly promising to remedy them, granted them the benefits they sought, and suggested that they form their own committee or labor organization to deal with the Employer. The violations are patent and uncontradicted. See *Aquatech, Inc.*, 297 NLRB 711, 713 (1990); *Montgomery Ward*, 290 NLRB 981, 983–985 (1988); *Uarco Inc.*, 216 NLRB 1, 2 (1974); and *Reliance Electric Co.*, 191 NLRB 44, 46 (1971).

Before the R case hearing, the LPNs, RNs, and supervisors freely smoked at the nurses' stations and in the room behind those stations outside of visiting hours. They would also eat at the nurses' stations; Urgo even provided lunches or other treats to celebrate successfully completed state inspections. Sometime after the hearing, however, the employees heard a rumor that there was going to be a crackdown on smoking in the facility. Nancy Schafer and another LPN questioned Fronzek about the rumored changes. Fronzek told them, ''With everything that's going on at the nursing home at this point in time, I have to enforce these rules even though they haven't been enforced in the past, and that includes no smoking or drinking coffee or soda at the nurses' station.''

Given that the only thing ''going on at the nursing home'' at that point in time was the LPNs union activity (at least on the face of this record), I must conclude that Fronzek was announcing a crackdown motivated by that activity. As General Counsel points out in his comprehensive brief, the stricter enforcement of rules, or the institution of new ones, so motivated is violative of Section 8(a)(1). *Jennie-O-Foods, Inc.*, 301 NLRB 305, 312–315 (1991); *Dynamics Corp. of America*, 286 NLRB 920 (1987).

2. Violations of Section 8(a)(3), (4), and (5)

a. *Wright Line*

Wright Line, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), provides the analytical mode for resolving discrimination cases turning upon an employer's motivation. Under that test, the General Counsel must first

> make a prima facie showing sufficient to support the inference that the protected conduct was ''a motivating factor'' in the employer's decision. Once accomplished, the burden shifts to the employer to demonstrate that the same action would have taken place notwithstanding the protected conduct. It is also well settled, however, that when a respondent's stated motives for its actions are found to be false, the circumstances may warrant an inference that the true motive is an unlawful one that the respondent desires to conceal. [*Fluor Daniel, Inc.*, 304 NLRB 970 (1991).]

A prima facie case is made out where the General Counsel establishes union activity, employer knowledge, animus, and adverse action taken against those involved or suspected of involvement in the union activity which has the effect of discouraging union activity. *Farmer Bros. Co.*, 303 NLRB 638, 649 (1991).

In the instant case, a strong prima facie case has been made out with respect to all of the alleged discriminatees. Lindsey, Caine, Schafer, and Ocasio were each heavily involved in union and other statutorily protected activity; their activity included testifying as the only employee witnesses on the petitioner's behalf at the R case hearing. Respondent was fully aware of their activity and had expressed both generalized union animus and particularized animus directed at Caine and Lindsey. Respondent, moreover, has been shown to be willing to violate the Act in numerous ways in its effort to avoid the Charging Party's organizational efforts. As will be shown below, each of the alleged discriminatees suffered adverse actions at Respondent's hands which could not help but discourage them and others from engaging in further union activity. The prima facie case thus established shifts the burden to Respondent to demonstrate that those adverse actions would have occurred even if there had been no protected activity. That burden has not been met. Respondent's defense, essentially that each of these employees became emboldened by their union activity and thought they could behave with impunity, is not supported by the record. To the extent that Respondent's justifications for its adverse actions could be said to have sustained its burden, I have found them to be false and pretextual.

b. *Diane Caine*

Diane Caine worked on the 11 p.m. to 7 a.m. shift. However, on July 21, the schedule clerk called her at 3 p.m. and asked her to come in and work a double shift, starting immediately. She refused because of insufficient notice. Shortly thereafter, Fronzek called and asked Caine to come in, as a favor to her, and promised her overtime pay if she did. Caine came in at 7 p.m. At 9 p.m., Fronzek called Caine and asked her ''to be a good girl that night and not smoke on the desk.'' Fronzek told Caine that her job was on the line, that Urgo wanted Fronzek to write Caine up if she saw Caine smoking on the desk. Fronzek said that she would come around to Caine's station later that evening; she never did. Caine denied smoking at the nurses' station that night; her testimony was not contradicted by any direct evidence. She also testified that at least one other LPN, Dorinda Norval, was smoking at the desk.

Caine worked on July 22, without incident. She was not scheduled to work again until the 11–7 shift on Friday, July 24. On that day, however, Aponte called her about 3 p.m. to tell her that she was suspended and off the schedule until further notice. Aponte refused to tell her why and merely

stated that if she wanted to hear more, she should come to a meeting with Konig on Monday. Caine said that if she was not told why she was suspended, she would come in to work as scheduled. After that conversation, Aponte called back to ask if Caine really intended to appear at work that night. When told that she did, Aponte threatened that she would be physically ejected by the police.

Caine reported to the facility at 10:30 p.m. on Friday night. Urgo (not normally present at that hour) and other supervisors were there to observe her; Urgo called the police. Caine was expelled even though she explained to the police officers that she had come in so as to avoid being discharged as a no-show.

On Monday, July 27, Caine came to Urgo's office for the meeting. Konig was there notwithstanding his claim that he normally did not get involved in discharges of LPNs or nurses' aides ''unless there are extenuating circumstances or something is a bit out of the norm.'' Also present were Urgo, Aponte, and Croiter. Fronzek (who was still alive and in Respondent's employ at that time) was not there. Caine was accompanied by Darlene Lindsey, and both the steward from Local 35, IBT and Local 35's representative.

Caine asked why she was suspended. Konig said that that was what they were there to find out. He told her that Fronzek had said that she was smoking at the desk that night and had insubordinately refused her order that she stop, even blowing smoke in Fronzek's face and becoming belligerent and screaming when told to extinguish her cigarette. Caine denied smoking and said that she had not seen Fronzek at any time that night. Konig claimed to have been told by Fronzek that there was a package of Dorals and a burning cigarette at the desk. Caine pointed out that Dorals was Norval's brand, not hers. Urgo began to say that Fronzek was going to retract her statement; Konig shut her up. He claimed to have five witnesses and accused Caine of calling them liars. Caine suggested that they were mistaken and asked to see their statements; Urgo said that they were locked in a drawer to which she did not have the key.

Caine asked Konig why they were doing this to her and reminded him that she had been a good employee, one whom Konig had even sent to work at other facilities. Konig replied, ''If this had happened a month ago, we wouldn't have to go this route. . . . Sometime when we're alone, just the two of us in a room together, I'll tell you why.'' Munsey, the Local 35 steward, asked Konig why he was trying to get Caine to admit to doing something she hadn't done and pointed out that even if she had been smoking, that was not a dischargeable offense under the Local 35 contract. Konig answered that he owned the facility and he made the rules. Caine's credible testimony as to these admissions stands uncontradicted.

On the following day, Samantha Newman called Caine and told her that ''after a thorough investigation and the meeting on Monday, they decided that [Caine] was terminated.''

Urgo claimed that she had been called by Fronzek during the late evening on July 21, while at home. Fronzek had purportedly told her that she was having a problem with Caine, that she had spoken to Caine several times about eating and smoking at the nurses' station and that Caine had become very insubordinate and continued to smoke at the station.

On July 22, Urgo allegedly took statements from Fronzek and two employees who were supposedly present. Assuming the admissibility of Fronzek's statement,[7] it asserts that, in the course of a telephone conversation, she told Caine that she was going to have to enforce previously unenforced rules regarding smoking and eating and asked Caine to comply. Caine, it relates, refused and got angry at her. She later observed a pack of cigarettes and a smoldering cigarette at the desk and subsequently saw, from a distance, Caine smoking and appearing to blow smoke in her direction. According to the statement, Fronzek did not directly confront Caine. The two employees also gave short statements asserting that they had seen Caine smoking. Respondent never questioned Norval; neither did anyone ask any of the other employees about Norval's alleged violation of the newly imposed rule. Norval was not an overt supporter of the Union.

I need not reach the question of whether Caine was smoking at the nurses' station on July 21. The evidence is clear that there had been no enforcement of any purported no smoking rule,[8] before the union activity notwithstanding that smoking, by employees and supervisors alike, was common throughout the facility.[9] The adoption of that rule, or the reassertion of a previously unenforced rule, immediately after the R case hearing, was discriminatory. The disparate application of that rule to discharge one of the leading union proponents and a witness for the Union at the R case hearing[10] was similarly discriminatory. *Dynamics Corp. of America*, supra.

Even apart from the discriminatory adoption and application of the no smoking rule, it is clear that Respondent was motivated in discharging Caine by her union activity. Konig's statements, to the effect that he would not have had to discharge her if this had occurred a month earlier and that he would someday tell her why she was being discharged, are admissions that smoking was not the real reason. The admission that the stated reason was false warrants the inference that the real reason was one that Respondent desired to conceal, one which was unlawful. *Fluor Daniel*, supra. Moreover, it appears that Respondent set Caine up for dis-

[7] It was received over the General Counsel's objection, only as evidence going to Respondent's state of mind. Respondent did not support its argument that it should be admissible as affirmative evidence under the so-called dead man's exception to the hearsay rule, although requested to brief the issue. Caine, who was familiar with Fronzek's handwriting and signature, claimed that it had not been written by Fronzek. I reject it as affirmative evidence, except to the extent that it contains admissions against Respondent's interest; I question whether it originated with Fronzek or had been voluntarily given to Respondent by her.

[8] Respondent produced a rule, supposedly drawn from its policy manual, but never introduced either that rule or the manual.

[9] Urgo's testimony, to the effect that there had been no prior disciplines issued under this policy because she was unaware of any violations is patently incredible in light of the testimony of various witnesses who identified employees and supervisors, including Urgo, as smoking in the corridors and at the nurses' stations, and the admission contained in what purports to be Fronzek's statement about the previously unenforced rule.

[10] Konig's claim that he was unaware of Caine's union activity and of her testimony at the R case hearing is similarly patently incredible, particularly in light of his verbal attack upon her at the July 13 meeting and his in-depth involvement in the homes' daily activities, at least when the union's supporters were involved.

charge. It reasserted the previously unenforced rule and then called her in, instructing Fronzek to find her in violation so that it could terminate her. At the subsequent meeting, both Konig and Urgo exaggerated what Fronzek and others had allegedly told them about the events of July 21. They were also disinterested in whether other employees had smoked at the nurses' station that night.

Based on all of the foregoing, I find that Respondent discharged Diane Caine in violation of Section 8(a)(3), (4), and (1) of the Act.

c. *Darlene Lindsey*

On July 9, the day following the R case hearing, Urgo observed that Lindsey had a can of soda on her cart as she went about her rounds. Prior to the hearing, such conduct by Lindsey or others had at most provoked a verbal reminder that this was contrary to policy. This time, Urgo asked Lindsey whether the soda can was hers and then walked on. Lindsey was subsequently called to the office and issued a written verbal warning. Lindsey told Urgo that it was a joke, that others had beverage cans on their carts all the time, naming one employee in particular. Urgo replied that writeups given to others were none of Lindsey's business. Lindsey accused Urgo of only writing her up because of her union activity. Urgo did not deny this. The record contains no evidence of others being written up for this, either before or after the hearing.

Given my finding that Respondent had threatened to more rigorously enforce work rules because of the union activity, the evidence of both disparate treatment and prior lack of enforcement, the timing of this incident right after Lindsey testified and Urgo's failure to deny the accusation that she was motivated by Lindsey's union activity, I find the violation as alleged. *Dynamics Corp. of America*, supra. Respondent has failed to sustain its burden that it would have so disciplined Lindsey in the absence of her protected activity.

Lindsey had worked in the B unit since the start of her employment. She had told management that if she were to be transferred to the highly skilled A unit, she would quit.[11] To this point in time, management had accommodated her preference, even to the point of juggling overtime assignments for her.

However, on July 28, Lindsey was called into a meeting with Urgo, Aponte, and Diane Croiter, regional manager. She was told that there were going to be some changes, that she was going to be transferred to the A unit, as the charge nurse. She refused to work as a charge nurse and accused them of doing this in order to force her to quit, because of her union activity. They told her to look upon it as a challenge. She told them she would not give them the satisfaction of her quitting. When she asked if the transfer was to be permanent, she was told that there was a possibility of her moving back to another unit if she could not make it there; Urgo said that she had another, unspecified, option. She was ordered to report to the A unit on the following day.

In order to make room for Lindsey on the A unit, Caroline Jenkins was transferred from the A unit to fill Lindsey's slot in the B unit. Respondent offered no explanation for Jenkins' transfer out of the A unit or Lindsey's transfer into it.

In light of the General Counsel's strong prima facie case and Respondent's utter failure to offer anything by way of explanation, the conclusion that the transfer was made for discriminatory reasons is compelling. I note Respondent's knowledge of Lindsey's threat to quit if ever assigned to the A unit and the efforts made to create an opening for Lindsey on that unit. The presence of three high level supervisors to tell Lindsey that she was being transferred and Urgo's highly suspicious reference to ''another option,'' also strongly suggest that what Respondent really wanted was Lindsey's voluntary termination.

Lindsey worked 2 days on the A unit and suffered a fall in the course of her work, injuring her back and revealing a dangerous rise in her blood pressure. For the next 2 weeks or so, she worked off and on, as she could. She was treated for the back injury by Respondent's physician, Dr. Leibowitz, and by her own physician, Dr. Napoli, for her hypertension. Dr. Napoli recommended that she take 3 weeks off, from August 12 through 31. Dr. Leibowitz added an additional week to her time off, to September 8. Lindsey also took 2 weeks of vacation time.[12] All of the leave was approved by Urgo. Lindsey filed no forms or claims for compensation. While she expected that the bills from Dr. Leibowitz and the physical therapist would be taken care of by Respondent, she paid for Dr. Napoli's services.

For more than a year, Lindsey had held a private duty job in addition to her employment with Respondent. As she described it, without contradiction, it was light duty, caring for one elderly wheelchair bound woman in the evenings. The work involved no lifting other than to assist her to use the bathroom and to get into bed. She was permitted to rest, and even sleep, while she was there.

Lindsey testified, credibly and without contradiction, that both Urgo and Aponte were aware of her private duty job. When she brought the doctors' notes in for approval of the leave, Urgo asked whether she would be able to continue her private duty job. Lindsey said that she would do so as long as she was able to. Aponte similarly discussed this outside work with Lindsey when Lindsey came into the facility to fill a prescription. Lindsey had also told Dr. Leibowitz about this job when she was examined by him.[13]

According to Urgo, she learned of Lindsey's private duty job from her nursing supervisor and, at the end of August or in early September, retained a private investigator to look into it. That investigator went to the patient's home on September 7 and determined that a woman named Darlene was working there. A report to that effect was sent to Urgo on September 9.

Urgo testified, however, that she called Lindsey on September 3, *after she had received the investigator's report.*

[11] She feared assignment to the A unit because she believed that numerous errors were committed there, including missing narcotics, which could jeopardize her license. She acknowledged that she considered the work in the A unit to be more physically demanding and mentally stressful.

[12] I do not find that Lindsey's confusion as to the exact lengths of each period of leave and the dates involved warrants that I discredit her testimony. The dates set forth above are consistent with the doctors' notes excusing her from work.

[13] Urgo implied that Lindsey's private duty job was news to her, but did not expressly deny that she had been aware of it earlier or that she had been told by Lindsey that she would continue to hold this job while on her leave. Neither Aponte nor Leibowitz testified.

Urgo claimed that she told Lindsey that, inasmuch as she was doing the same type of heavy-duty work for a private patient that she would be doing at the nursing home but for her injury, and was out on workmen's compensation, she was to return to work on September 4. When Lindsey refused, Urgo sent her a telegram, directing her to report for work for the first shift on September 4. To further complicate matters, Respondent introduced notes from Dr. Leibowitz. One, dated August 25, stated ''If pt. [Lindsey] is able to work outside NCV, pt. discharged from my care & return to work today. Another. dated September 9, authorized her return to work on a part time basis on that date.''[14]

Inasmuch as the Employer was taking the position that the LPNs were represented by Local 35, IBT, Lindsey called a representative of that union and was advised to call off sick and go to the doctor. She made an appointment with Dr. Leibowitz for the following day. The doctor's receptionist told her that Lacey had been calling the doctor's office, ''bugging the doctor to get you back to work.'' Lindsey then called the nursing home. After unsuccessfully trying to speak with Urgo, she told Fronzek that she was calling off sick. She learned from Fronzek that she had been placed on the schedule for only 1 day, September 4.

In addition to going through Local 35 with respect to the order that she work on September 4, Lindsey filed grievances with Local 35 over her written warning and her transfer to the A unit. A meeting was set up with Urgo for some time after September 4. Local 35's representative asked Lindsey to speak with Urgo about efforts Urgo had undertaken to have the nurses sign cards for Local 35 and to secure a list or petition which Urgo had.

When she went into the home, Lindsey met another LPN who gave her a list of LPNs who purportedly wanted representation by Local 35. She then went to Urgo's office and met with Urgo and Samantha Newman, facility administrator. Urgo asked what had caused her to switch her allegiance between the two unions. Lindsey replied that she had always been willing to do whatever the majority wanted. Urgo told her that the nurses were tired of the CWA and wanted Local 35; she added several names to the list. Urgo then called some of the nurses, and had Lindsey call at least one, to determine if they were supporting Local 35. Urgo gave Lindsey the list and told her to take it to the CWA to persuade that union to give up its representational efforts.

Lindsey left with the list. She took it to the Union but she did not attempt to dissuade CWA from continuing to seek to represent Respondent's employees. On September 17, the Decision and Direction of Election issued. CWA, it was clear, was not abandoning its representational efforts.

Lindsey was scheduled to return to work on September 23. In a chance encounter with Aponte on September 21, she was told that Aponte, at least, welcomed her return. However, on September 22, Newman called to tell her to come into a meeting at the facility. She met with Urgo, Aponte, and Newman. Newman told her that she was being terminated for refusing to come in to work on September 4 while working in the same capacity as an LPN. Lindsey said that they had known all along that she was continuing to work on that job. Newman told her that she could not ''double-dip,'' i.e., collect workmen's compensation and work somewhere else. They argued over whether Lindsey was out on compensation with Lindsey noting that she had filed no forms and collected no benefits. When asked who she thought was paying her medical bills, she pointed out that Respondent had refused to pay them. She also pointed out that she had been in and out of the facility since September 11 with nothing having been said to her about her employment status and accused them of discharging her because of the Union, particularly because the Decision and Direction of Election had just issued.

Lindsey's discharge, following both a discriminatory warning and a discriminatory transfer which was intended to provoke her to quit, presents a particularly strong prima facie case. Respondent's defense, that this employee was working at a comparable job while out on a compensable injury and refused an order to come in to work when this was discovered, could on its face rebut that prima facie case.

However, analysis of the facts reveals that Respondent's defense is false and pretextual. First, Lindsey was not performing comparable work, a fact that Respondent could have determined by talking to Lindsey or by conducting a bona fide and complete investigation. Her duties on the private case were much lighter than those she did for Respondent. She had but one patient, with no heavy lifting, and little that was actually required of her during the shift. On duty in the A unit, she had continuous responsibilities servicing 30 patients. The work involved considerable heavy lifting and stress. Second, Respondent was aware of Lindsey's private duty work; both Urgo and Aponte knew from the start of her injury leave that Lindsey would be continuing to work for this patient. Moreover, Urgo's reliance upon the report of private investigator was a sham. She claimed to have called Lindsey to come in to work after receiving that report. Her call, however, was on September 3 and the investigation was not conducted until September 7.

Neither has Respondent shown that Lindsey's conduct was improper. Lindsey had not sought any compensation beyond payment of the medical expenses related to her back injury. Neither was it shown that an employee would be precluded from receiving compensation when disabled from her principal employment merely because she had continued to work at a preexisting job, the duties of which were not precluded by her injury.

Finally, the timing indicates discriminatory motivation. Lindsey was not terminated immediately after her refusal to report for work on September 4 even though Urgo stated that she was discharged in part for being a no-call/no-show. She was permitted to come and go through the facility for more than 2 weeks before being discharged. It was only after the Decision and Direction of Election issued and was served on Respondent that Lindsey was discharged. It is a reasonable conclusion that Respondent, already angered by her union activity, became further disturbed by Lindsey's failure to convince CWA to drop its representational efforts and discharged her in reprisal.

[14] Lindsey testified that Urgo merely asked that she come in, as a favor, which she refused. After her refusal, she received the September 3 telegram directing that she report. I credit Lindsey, noting, in addition to their demeanor, the conflicts in Urgo's testimony concerning when, in relation to her call and the telegram, she had received the investigator's report. The dates appearing on Dr. Leibowitz' notes, the investigator's report and the telegram all demonstrate the implausibility of Urgo's claims.

Based on all of the foregoing, I conclude that Respondent discriminatorily warned, transferred and ultimately discharged Darlene Lindsey because of her union activity and because she testified on behalf of the Union-Petitioner in the R case hearing, in violation of Section 8(a)(3), (4), and (1) of the Act.

d. *Carmen Ocasio*

Carmen Ocasio has worked for Respondent as an LPN for 4-1/2 years. In April, she was working full time on the C unit, five 8-hour shifts, including every other weekend. At that time, Urgo assigned her the additional responsibility of distributing medications in the residential unit, twice each shift. Ocasio asked whether she would receive any extra compensation. After checking with Konig,[15] Urgo raised her pay 25 cents per hour, expressly noting that she was doing the residential ''meds'' and C unit full time. The raise was ''for taking on this responsibility.''

In August, Ocasio told Urgo that she was returning to school to earn her RN degree. Starting in September, her schedule was adjusted to accommodate her schooling. She began to work 32 hours on the weekends (two double shifts); she frequently picked up a fifth shift during the week for a total of 40 hours. She continued to pass the medications in the residential unit twice each shift.

Effective November 1, Urgo revoked Ocasio's 25-cent increase. The pay adjustment form stated, ''Decrease in pay status. Employee is no longer full time C unit and residential. Part time due to employee going to school. Mr. Konig is aware. Employee may resume this status after she finishes R.N. school.'' Ocasio learned of the change from payroll; she was told that it was done at Urgo's direction. No one had told her that she was now part time.

When her hours were changed in September, Ocasio was working a schedule similar to that of Nancy Schafer. Schafer testified, without contradiction, that she was considered full time and that, when she started, an employee who worked 32 hours was deemed full time. Respondent has acknowledged that it maintains no different wage scales or benefit levels for its full and part time employees.

Given the strong prima facie case presented by the General Counsel, the burden has shifted to Respondent to demonstrate that this pay cut was not discriminatorily motivated. Nothing beyond a naked claim that Ocasio was now part time was proffered. That claim is false and, I conclude, pretextual. She remained a full time employee. Moreover, the raise had not been given because she had become full time, it was given because she had taken on additional responsibility, which she retained. Ocasio's pay cut, I find, was motivated by her union activity and her testimony in the R case hearing and violates Section 8(a)(3), (4), and (1).

The Union had been certified as the employee's statutory representative just 3 days before Respondent took away Ocasio's raise. Respondent gave the Union no notice and no opportunity to bargain about the pay cut. General Counsel has alleged, and I agree, that such unilateral action must be found to violate Respondent's duty to bargain in good faith under Section 8(a)(5) and (1) of the Act. See *Nemacolin Country Club*, 291 NLRB 456, 463 (1988), and *Schnadig Corp.*, 265 NLRB 147, 170 (1982). The timing further supports the 8(a)(3) and (4) conclusion.

e. *Nancy Schafer*

Nancy Schafer had been employed as an LPN at the Vineland facility since October of 1989. She worked double shifts on weekends and an additional shift during the week, on the C unit. In addition to her activity in promoting the union and testifying in the R case, she had spoken up during Konig's July 13 meeting.

Schafer was working a double shift on August 29, 6:45 a.m. to 11:15 p.m., assigned to team 2. As part of her duties on that team, she was required to distribute the patients' medications (pass meds), a duty she would not not normally perform. At the 10 a.m. med pass, residential patient CZ came into the office. Schafer noticed that CZ's chart authorized two different pain medications, Tylenol and Percocet, a prescription drug. Residential patients are expected to request such medications when and as the need arises. Schafer asked CZ if she wanted anything for pain and, when the patient said yes, asked her which one she wanted. CZ didn't know and asked for the one she always got. Shafer said she had doctor's orders to give her either one and again CZ indicated that she didn't know which one she needed. Schafer said, ''Well, if you don't know the name of this, how am I supposed to give you this medication?''

Present in the office during this exchange was Phyllis Culley, the supervisor. Culley interjected that Schafer should ask the patient if she was having mild or severe pain and Culley then asked that question of CZ. CZ was unable to understand until the question was rephrased, ''Do you hurt a little or a lot?'' When she said ''a lot,'' Culley told her that when she was hurting a lot, she should ask for the Percocet. Schafer then dispensed the Percocet and signed it out on the narcotics log.

After CZ left the office, Schafer questioned whether CZ belonged in the residential unit. She noted that the residential patients should be taught to know their own medications well enough to ask for them. CZ, she opined, was unable to do that. Culley told Schafer that several patients were being moved from the residential unit for that very reason. Schafer described Culley as replying to her in an abrupt and short fashion but denied that Culley criticized her handling of the patient.

Schafer saw CZ again at the 2 p.m. med pass. CZ apologized to Schafer for being short with her, saying, ''Sometimes we get old and say things we don't mean.'' She did not ask for any medications at that time. Neither did she ask for any medication when Schafer saw her at the 6 p.m. pass.

At 7 p.m., while Schafer was on her supper break with LPN Kim Urso, Pat Patterson, the nurses' aide from the residential unit, asked why CZ had not been given pain medication at 6 p.m. She was told that CZ had not requested any. Patterson said that CZ was now asking for it. Urso told her that Schafer would be over to give CZ the medication when they finished their break. At 7:45 p.m., Schafer went to the residential unit, found CZ in the smoking room, and asked her whether she needed Percocet. When CZ said that she did, Schafer gave her the medication and recorded it.

Schafer next saw CZ at the 10 p.m. med pass when she was given her routine medications. At that time, CZ asked for more pain medication. Schafer had to refuse as it was

[15] Konig's role in such a minor matter demonstrates the depth of his involvement in the day-to-day operations of the facility.

less than 6 hours since she had been given Percocet. On the following morning, Schafer saw CZ at the morning med pass. CZ was friendly and commented on a mental trick she had developed for remembering the name of her pain medication. CZ requested and was given her pain medication at that time.

When Schafer next reported for work, on September 5, she was called into Aponte's office and told that she was suspended until she could have a meeting with Konig on September 7. Aponte would only tell her that it involved serious patient issues.

Schafer met with Konig, Urgo, Aponte, Newman, and Lacey on September 7. Phyllis Culley, the only supervisor who witnessed the incident, was not present. According to Schafer's uncontradicted testimony, Konig claimed that a patient had alleged that Schafer had refused to tell her the name of her medication and then refused to give it to her. This, Konig said, had been witnessed by the patient's roommate and by Culley. Schafer was told that she had been physically and mentally abusive to a patient and that she had withheld that patient's pain medication from 8 p.m. until 11 p.m. at which time, she had been ''nasty'' to her. Urgo interjected that the patient thought that Schafer ''would kill her.'' When Schafer questioned this, Urgo retracted that claim. In the course of the meeting, Konig told her that ''it was not her other activities within the facility'' to which he was taking exception, just the patient issues. Schafer denied all the allegations; she never withheld any medications from this patient, she said. Rather, she gave her the medications when they were requested. She denied that she saw the patient at 11 p.m. on August 29; she was in the process of making her report to the incoming nurse at that time.

Schafer's testimony concerning her involvement with patient CZ was credibly offered and is uncontradicted. The records of medications dispensed confirm Schafer's testimony as to what medications she gave CZ and when. Respondent did not proffer the testimony of Supervisor Phyllis Culley or any other witness to these events. Respondent's failure to present any such evidence, particularly the testimony of Culley, warrants that I credit Schafer and draw the adverse inference that had they done so, those witnesses would have corroborated Schafer. *Martin Luther King Sr. Nursing Center*, 231 NLRB 15 fn. 1 (1977).

Respondent reported the allegations against Schafer to the State's Office of the Ombudsman for the Institutionalized Elderly and suspended her. Schafer spoke with the Ombudsman by telephone on a number of occasions but he did not interview her in person notwithstanding her repeated offers to meet with him. She gave him a written report of the events and the names of the other nurses with her at the 11 p.m. report, the time when she allegedly was ''nasty'' to the patient. The Ombudsman only spoke to one of those witnesses, according to information Schafer had received.

According to Urgo, the decision to terminate Schafer was made when Respondent received the Ombudsman's report. That report, received by Respondent on January 15, stated:

> After an investigation conducted by this Office on September 15, 1992, we were able to obtain sufficient information that the patient may have been verbally abused by the nurse.
>
> The nurse was suspended from the facility, and we were informed that the facility intended to terminate her employment.
>
> In light of the results of this investigation no further action will be taken by this Office.

Schafer was terminated on January 15 for alleged verbal and mental abuse of the patient. The State took no action against her license as a practical nurse.

Other nurses testified about several incidents involving patients which, they claimed, resulted in no report to the Ombudsman's office or other discipline. Three incidents involved the failure of either an LPN or a supervisor to provide a scheduled treatment to a patient. The fourth incident involved a report by a patient to LPN Wanda Walker that Cathy Lacy, Respondent's admissions director, had physically pulled that patient by the arm to force her to go to the hairdresser. Walker reported this complaint to Aponte and documented it on the patient's chart. Lacey is still employed at the facility. The record is devoid of any evidence that this incident was ever reported to the Ombudsman.

The State of New Jersey apparently requires that all complaints of patient abuse involving the institutionalized elderly be reported to the Ombudsman. If CZ actually alleged that she had been abused, Respondent could not be faulted for making such a report. Given Schafer's uncontradicted testimony concerning the events of August 29 and 30, and the failure of Respondent to adduce available witnesses or other evidence to contradict her, I must discredit Urgo's claim that the patient made such an allegation. Any report made to the Ombudsman office must have originated with Respondent. Konig's unsolicited reference to Schafer's other activities within the facility, in the course of the September 7 meeting, evidences the discriminatory motivation for making such a report. That conclusion is further evidenced by Respondent's disparate failure to report other incidents of potential abuse, particularly the complaint by a patient against Respondent's admissions director, Lacey.

I must further find that the Ombudsman's report does not justify Schafer's termination. First, I note a significant element of ''bootstrapping'' in Respondent's contention. Respondent asserts that it discharged Schafer because of the report; the report indicates that the Ombudsman was not reaching a final conclusion because Respondent had told him that it intended to discharge Schafer. It is clear that Respondent decided to discharge Schafer before the report issued and independently of that report.

Moreover, even assuming that the Ombudsman's report antedated the decision to discharge Schafer, it does not support the claim that she abused a patient. The statement that there was ''sufficient information to substantiate that the patient may have been verbally abused'' is a bureaucratic nonconclusion. It is simply too weak a thread to support the discharge of an employee of nearly 4 years' tenure.

Accordingly, having found that Respondent disparately and discriminatorily reported Schafer to the Office of the Ombudsman, I must conclude that its reliance on the report of that office fails to meet its burden of rebutting the General Counsel's prima facie case. Even assuming that the events of August 29 and 30 were legitimately reported to that office, I conclude that the ambiguous nature of the Ombudsman's report negates reliance upon it to meet Respondent's burden

of proof. I find that Respondent reported Nancy Schafer to the Office of the Ombudsman and discharged her because of her union activities, including her testimony in the R case hearing, in violation of Section 8(a)(3), (4), and (1).

CONCLUSIONS OF LAW

1. By threatening to impose and imposing more onerous and less desirable working conditions, by interrogating employees concerning their union activities, by soliciting grievances and by soliciting employees to form their own labor organization or grievance committee with whom it promised to deal, and by promising to grant and granting improved terms and conditions of employment, all in order to discourage employees from engaging in union activities and from joining, supporting or voting for the Union, the Respondent has violated Section 8(a)(1) of the Act.

2. By discriminatorily issuing warnings to employees, transferring them to less desirable positions, reducing their pay and discharging them because of their union and other protected activities, including giving testimony under the Act, the Respondent has violated Section 8(a)(3), (4), and (1) of the Act.

3. By unilaterally reducing an employees' hourly rate of pay without giving the Union notice and an opportunity to bargain, the Respondent has violated Section 8(a)(5) and (1) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent's violations include a discriminatory warning to and transfer of Darlene Lindsey and a discriminatory reduction in pay affecting Carmen Ocasio as well as the discriminatory discharges of Darlene Lindsey, Diane Caine, and Nancy Schafer. In order to remedy these violations, Respondent must revoke the warning issued to Lindsey and remove it from its files and restore Ocasio's wage rate and make her whole for any loss of earnings she suffered. Having discriminatorily discharged Lindsey, Caine, and Schafer, it must offer these employees reinstatement and make them whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offers of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The offer of reinstatement to Lindsey must be to a position in the B or C units, such as she occupied prior to her discriminatory transfer to the A unit.

Respondent's unlawful conduct began immediately upon its notice of the employees' union activities. It continued throughout the preelection period and for several months thereafter, encompassing nearly the entire spectrum of employer unfair labor practices. It included the discriminatory discharges of three of the employees who testified on behalf of the petitioner in the R case hearing and the discriminatory reduction in the hourly wage of the fourth. Discrimination against those who are witnesses in Board proceedings is a particularly egregious act. Because of the Respondent's egregious and widespread misconduct, demonstrating a general disregard for the employees' fundamental rights, I find it necessary to issue a broad Order requiring the Respondent to cease and desist from infringing in any manner on rights guaranteed employees by Section 7 of the Act. *Hickmott Foods*, 242 NLRB 1357 (1979).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[16]

ORDER

The Respondent, Michael Konig, t/a Nursing Center at Vineland, Vineland, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening to impose and imposing more onerous and less desirable working conditions, interrogating employees concerning their union activities, soliciting grievances and soliciting employees to form their own labor organization or grievance committee with whom it promises to deal, and promising to grant and granting improved terms and conditions of employment, all in order to discourage employees from engaging in union activities and from joining, supporting or voting for the Union.

(b) Discriminatorily issuing warnings to employees, transferring them to less desirable positions, reducing their pay and discharging them because of their union and other protected activities, including giving testimony under the Act.

(c) Unilaterally reducing rates of pay without giving the Union notice and an opportunity to bargain.

(d) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All full time and regular part-time Licensed Nurses (LPNs) employed by the Employer at its 1640 South Lincoln Avenue, Vineland, New Jersey facility, excluding all other employees, registered nurses, quality assurance employees, nurses aides, clerical employees, housekeeping employees, dietary employees, laundry employees, guards and supervisors as defined in the Act.

(b) Offer Darlene Lindsey, Diane Caine, and Nancy Schafer immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this Decision.

[16] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(c) Restore the 25-cent-per-hour raise to Carmen Ocasio's wage rate and make her whole for any loss of income she suffered as a result of the discrimination against her.

(d) Remove from its files any references to the unlawful discharges and to the warning issued to Darlene Lindsey and notify the employees in writing that this has been done and that the discharges and warning will not be used against them in any way.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Post at its facility in Vineland, New Jersey, copies of the attached notice marked ''Appendix.''[17] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[17] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
> To form, join, or assist any union
> To bargain collectively through representatives of their own choice
> To act together for other mutual aid or protection
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten to impose or impose more onerous and less desirable working conditions, interrogate employees concerning their union activities, solicit grievances, or solicit employees to form their own labor organization or grievance committee or promise to grant or grant improved terms and conditions of employment in order to discourage employees from engaging in union activities and from joining, supporting or voting for the Union.

WE WILL NOT discriminatorily issue warnings to employees, transfer them to less desirable positions, reduce their pay or discharge them because of their union and other protected activities, including giving testimony under the Act.

WE WILL NOT unilaterally reduce rates of pay without giving the Union notice and an opportunity to bargain.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

> All full time and regular part-time Licensed Nurses (LPNs) employed by the Employer at its 1640 South Lincoln Avenue, Vineland, New Jersey facility, excluding all other employees, registered nurses, quality assurance employees, nurses aides, clerical employees, housekeeping employees, dietary employees, laundry employees, guards and supervisors as defined in the Act.

WE WILL offer Darlene Lindsey, Diane Caine, and Nancy Schafer immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, WE WILL restore the wage increase previously paid to Carmen Ocasio and WE WILL make these employees whole for any loss of earnings and other benefits resulting from their discharges (less any net interim earnings) or wage reductions, plus interest.

WE WILL notify each of these employees that we have removed from our files any references to their discharges or warnings and that the warnings or discharges will not be used against them in any way.

> MICHAEL KONIG, T/A NURSING CENTER AT VINELAND